

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,)	No. CR 16-57-MWB
)	
Plaintiff,)	
)	
vs.)	
)	
TYLER KONIGSMARK,)	
)	GOVERNMENT'S SENTENCING
Defendant.)	MEMORANDUM

The government submits the following memorandum to address issues to be decided by the Court at sentencing.

I. SUMMARY OF THE CASE

- A. Witnesses: None.
- B. Exhibits: None.
- C. United States Sentencing Guidelines (USSG) Calculation: The government agrees with the guidelines calculation in the Presentence Investigation Report (PSIR).

II. FACTUAL ISSUES

The parties have discussed defendant's objections to statements in paragraphs 9, 10, 11, and 16 of the PSIR. Defendant does not dispute that, in their interviews, the two minors made the statements in these paragraphs. However, defendant does object to the factual accuracy of the objected-to statements.

The parties have agreed to stipulate that the buses the three victims rode on carried students from the sixth, seventh, and eighth grades.

III. THE GOVERNMENT DOES NOT RESIST A DOWNWARD VARIANCE, BUT DEFENDANT SHOULD RECEIVE A SENTENCE OF AT LEAST 15 YEARS' IMPRISONMENT

With respect to defendant's anticipated motion for a downward variance, the government does not resist a variance to a sentence of less than the guidelines sentence of life imprisonment. However, a sentence of at least 15 years' imprisonment is appropriate based on the factors under 18 U.S.C. § 3553(a).

The "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), involve defendant's exploitation or attempted exploitation of three girls who rode on school buses where he was an attendant. (PSIR ¶ 7). Defendant used Snapchat and his iPhone to request images depicting sexually explicit conduct from a 12-year-old girl, from a 13-year-old girl, and from a 14-year-old girl. (*Id.*). Defendant received sexually explicit images from the 12-year-old girl, including images of her vaginal area. (*Id.*). Defendant sent pictures of his penis to the 12-year-old girl and the 13-year-old girl. (*Id.*). On two occasions, after using Snapchat and his cell phone to arrange their meeting, defendant engaged in unprotected sexual intercourse with the 12-year-old girl. (PSIR ¶¶ 7, 11-12).

Defendant's "history and characteristics," 18 U.S.C. § 3553(a)(1), include his age (19 at the time of the offenses) and a history of no criminal convictions. (PSIR ¶¶ 58-59). Defendant reported that, for the past two years, he consumed alcohol less than one time per week, but at least once every two weeks; his alcohol use involved the consumption of three to four beers and at times drinking to the point of intoxication. (PSIR ¶ 75). He reported trying marijuana twice at age 15. (PSIR

¶ 76). Defendant has a high school diploma and completed one semester in college. (PSIR ¶ 77). He has been employed at several jobs. (PSIR ¶ 79).

While a defendant's history of employment can be a mitigating factor, in this case, defendant's employment as a bus attendant is an aggravating factor. This job enabled defendant to meet young girls whom he later sexually exploited or attempted to exploit. Given this circumstance, defendant's exploitation or attempted exploitation of three girls, and his engaging in sexual intercourse with a 12-year-old girl, a sentence above the mandatory minimum is appropriate.

In order to "reflect the seriousness of the offense," "promote respect for the law," "provide just punishment for the offense," "afford adequate deterrence to criminal conduct," and "protect the public from further crimes of the defendant," 18 U.S.C. § 3553(a)(2), the Court should impose a sentence of at least 15 years' imprisonment in this case.

CERTIFICATE OF SERVICE

I certify that I electronically served a copy of the foregoing document to which this certificate is attached to the parties or attorneys of record, shown below, on November 22, 2016.

UNITED STATES ATTORNEY

BY: s/ Mark Tremmel

COPIES TO: Chris Nathan

Respectfully submitted,

KEVIN W. TECHAU
United States Attorney

By: s/ Mark Tremmel

MARK TREMMEL
Assistant United States Attorney
111 Seventh Avenue SE, Box 1
Cedar Rapids, Iowa 52401
(319) 363-6333 / (319) 363-1990 (fax)
Mark.Tremmel@usdoj.gov